

BILL LOCKYER, Attorney General  
of the State of California  
SAMUEL K. HAMMOND, State Bar No. 141135  
Deputy Attorney General  
California Department of Justice  
110 West "A" Street, Suite 1100  
San Diego, CA 92101  
  
P.O. Box 85266  
San Diego, CA 92186-5266  
Telephone: (619) 645-2083  
Facsimile: (619) 645-2061

Attorneys for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to  
Revoke Probation Against:

ANDREW ANTHONY HOLGUIN, JR.  
PO Box 641  
Rancho Mirage, CA 92270

Respiratory Care Practitioner  
License No. 15772

Respondent.

Case No. R-2038

**ACCUSATION AND  
PETITION TO REVOKE  
PROBATION**

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about October 21, 1992, the Respiratory Care Board issued Respiratory Care Practitioner License No. 15772 to ANDREW ANTHONY HOLGUIN, JR. (Respondent). The Respiratory Care Practitioner License expired on February 28, 2006, and has not been renewed.

///

///

3. In a Respiratory Care Board's Decision and Order effective March 23, 2006, in the Matter of the Accusation Against Andrew Anthony Holguin, Jr., Case No. R-2006, Respondent's Respiratory Care Practitioner License was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of two (2) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

## JURISDICTION

4. This Accusation and Petition to Revoke Probation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 3710 of the Code states, in pertinent part: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer the provisions of the Respiratory Care Practice Act.”

6. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

7. Section 3750 of the Code states, in pertinent part:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“ . . .

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“ . . .

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation

1 of, or conspiring to violate any provision or term of this chapter or of any provision  
2 of Division 2 (commencing with Section 500).

3 “ . . . ”

4 8. Section 492 of the Code states, in pertinent part:

5 “Notwithstanding any other provision of law, successful completion of any  
6 diversion program under the Penal Code, or successful completion of an alcohol  
7 and drug problem assessment program under Article 5 (commencing with Section  
8 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any  
9 agency established under Division 2 (commencing with Section 500) of this code,  
10 or any initiative act referred to in that division, from taking disciplinary action  
11 against a licensee or from denying a license for professional misconduct,  
12 notwithstanding that evidence of that misconduct may be recorded in a record  
13 pertaining to an arrest. . . .”

14 9. California Code of Regulations (CCR), title 16, section 1399.370, states, in  
15 pertinent part:

16 “For the purposes of denial, suspension, or revocation of a license, a crime or act  
17 shall be considered to be substantially related to the qualifications, functions or duties of a  
18 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
19 perform the functions authorized by his or her license or in a manner inconsistent with the  
20 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
21 those involving the following:

22 “(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting  
23 the violation of or conspiring to violate any provision or term of the Act.

24 “ . . . ”

25 ///

26 ///

27 ///

28 ///

1 COST RECOVERY

2 10. Section 3753.5, subdivision (a) of the Code states, in pertinent part:

3 "In any order issued in resolution of a disciplinary proceeding before the board, the  
4 board or the administrative law judge may direct any practitioner or applicant found to have committed  
5 a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and  
6 prosecution of the case."

7 11. Section 3753.7 of the Code states:

8 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include  
9 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,  
10 and service fees."

11 12. Section 3753.1 of the Code states, in pertinent part:

12 "(a) An administrative disciplinary decision imposing terms of probation may include,  
13 among other things, a requirement that the licensee-probationer pay the monetary costs associated with  
14 monitoring the probation. "

15 FIRST CAUSE FOR DISCIPLINE

16 (Conviction of a Crime)

17 13. Respondent is subject to disciplinary action under Code sections 3750(d),  
18 3750(g), and CCR, title 16, section 1399.370(a), in that he was convicted of a crime substantially  
19 related to the qualifications, functions, or duties of a respiratory care practitioner. The circumstances  
20 are as follows:

21 A. On or about April 13, 2006, in the case entitled *The People of*  
22 *the State of California v. Andrew Anthony Holguin*, Case No. INM164864, before  
23 the Superior Court of California, County of Riverside (Indio), Respondent was  
24 convicted on his own guilty plea of one count of use and under the influence of a  
25 controlled substance, in violation of Health and Safety Code section 11550(a). The  
26 entry of judgment was deferred and Respondent was ordered to enroll and complete in  
27 a drug treatment program.

28 ///

1 B. The circumstances of the conviction are as follows: On or  
2 about January 28, 2006, Respondent was arrested and charged with violating Health  
3 and Safety Code section 11150(a) [under the influence of a controlled substance].  
4 Respondent admitted to smoking methamphetamine to the arresting officer. A blood  
5 screen was performed on Respondent which tested positive for  
6 amphetamine/methamphetamine.

7 C. On or about February 23, 2006, a Complaint was filed in  
8 Superior Court of California, County of Riverside, charging Respondent with one count  
9 of wilfully and unlawfully use and under the influence of a controlled substance, said  
10 controlled substance not having been administered by and under the direction of a  
11 person licensed by the State of California to prescribe and administer controlled  
12 substances in violation of Health and Safety Code section Health and Safety Code  
13 section 11550(a) [Count 1].

14 SECOND CAUSE FOR DISCIPLINE

15 (Use of a Controlled Substance)

16 14. Respondent is subject to disciplinary action under Code sections 3750.5(a) and  
17 (b), CCR, title 16, section 1399.370(a), in that he used a controlled substance, to wit:  
18 amphetamine/methamphetamine, as more particularly described in paragraph 13, above, which is  
19 incorporated by reference as if fully set forth herein.

20 FIRST CAUSE TO REVOKE PROBATION

21 (Obey All Laws)

22 15. At all times after the effective date of Respondent's probation, Condition 5  
23 stated:

24 "Respondent shall obey all laws, whether federal, state or local.  
25 Respondent shall also obey all regulations governing the practice of respiratory care  
in California.

26 "Respondent shall notify the Board in writing within 14 days of any  
27 incident resulting in his arrest, or charges filed against, or a citation issued against  
Respondent."

28 ///

1                   16.     Respondent's probation is subject to revocation because he failed to comply  
2 with Probation Condition 5, referenced above, in that in April 2006, he was convicted of being  
3 under the influence of a controlled substance, in June 2006, he violated a domestic violence  
4 restraining order. The facts and circumstances regarding this violation are as follows:

5                   A.     On or about April 13, 2006, Respondent was convicted of  
6 violating Health and Safety Code section 11550(a) [use and under the influence of  
7 a controlled substance], in the case entitled *The People of the State of California v.*  
8 *Andrew Anthony Holguin*, Case No. INM164864, before the Superior Court of  
9 California, County of Riverside (Indio).

10                  B.     On or about June 16, 2006, Respondent was arrested for  
11 violating a domestic violence restraining order protecting his ex-wife by going to  
12 her home and demanding she let him in. The matter has been referred to the  
13 District Attorney's Office for filing of charges.

14                  C.     Respondent failed to notify the Board in writing within 14  
15 days of the incidents resulting in his arrests and/or charges filed against him.

16                                 SECOND CAUSE TO REVOKE PROBATION

17   (Quarterly Reports)

18                   17.     At all times after the effective date of Respondent's probation, Condition 6  
19 stated:

20                                 "Respondent shall file quarterly reports of compliance under penalty of  
21 perjury, on forms to be provided to the probation monitor assigned by the Board.  
22 Omission or falsification in any manner of any information on these reports shall  
23 constitute a violation of probation and shall result in the filing of an accusation  
24 and/or a petition to revoke probation against Respondent's respiratory care  
25 practitioner license.

26                                 "Quarterly report forms will be provided by the Board. Respondent is  
27 responsible for contacting the Board to obtain additional forms if needed. Quarterly  
28 reports are due for each year of probation and the entire length of probation as  
follows:

                               "For the period covering January 1<sup>st</sup> through March 31<sup>st</sup>, reports are to be  
completed and submitted between April 1<sup>st</sup> and April 7<sup>th</sup>. For the period covering  
April 1<sup>st</sup> through June 30<sup>th</sup>, reports are to be completed and submitted between July  
1<sup>st</sup> and July 7<sup>th</sup>. For the period covering July 1<sup>st</sup> through September 30<sup>th</sup>, reports  
are to be completed and submitted between October 1<sup>st</sup> and October 7<sup>th</sup>. For the

1 period covering October 1<sup>st</sup> through December 31<sup>st</sup>, reports are to be completed  
2 and submitted between January 1<sup>st</sup> and January 7<sup>th</sup>.

3 "Failure to submit complete and timely reports shall constitute a violation of  
4 probation."

5 18. Respondent's probation is subject to revocation because he failed to comply  
6 with Probation Condition 6, in that, Respondent failed to file his Quarterly Report of Compliance  
7 for the period of April 1, 2006 through June 30, 2006, due to the Board by July 7, 2006.

### 8 THIRD CAUSE TO REVOKE PROBATION

9 (Probation Monitoring Program)

10 19. At all times after the effective date of Respondent's probation, Condition 7  
11 stated:

12 "Respondent shall comply with requirements of the Board appointed  
13 probation monitoring program, and shall, upon reasonable request, report to or  
14 appear to a local venue as directed.

15 "Respondent shall claim all certified mail issued by the Board, respond to  
16 all notices of reasonable requests timely, and submit Annual Reports, Identification  
17 Update reports or other reports similar in nature, as requested and directed by the  
18 Board or its representative.

19 "Respondent is encouraged to contact the Board's Probation Program at any  
20 time he has a question or concern regarding his terms and conditions of probation.

21 "Failure to appear for any scheduled meeting or examination, or cooperate  
22 with the requirements of the program, including timely submission of requested  
23 information, shall constitute a violation of probation and will result in the filing of  
24 an accusation and/or a petition to revoke probation against Respondent's respiratory  
25 care practitioner license."

26 20. Respondent's probation is subject to revocation because he failed to comply  
27 with Probation Condition 7, referenced above. The facts and circumstances regarding this  
28 violation are as follows: On or about April 24, 2006, the Board sent a certified letter to  
Respondent directing him to appear at a meeting at the Glendale District Office of the Medical  
Board of California scheduled on May 9, 2006. The letter also directed him to complete the  
Board's biological fluid testing program enrollment forms to bring to the meeting. Respondent  
failed to appear at the scheduled meeting as directed.

1 FOURTH CAUSE TO REVOKE PROBATION

2 (Probation Monitoring Costs)

3 21. At all times after the effective date of Respondent's probation, Condition 8  
4 stated:

5 "All costs incurred for probation monitoring during the entire probation  
6 shall be paid by the Respondent. The monthly cost may be adjusted as expenses  
7 are reduced or increased. Respondent's failure to comply with all terms and  
8 conditions may also cause this amount to be increased.

9 "All payments for costs are to be sent directly to the Respiratory Care  
10 Board and must be received by the date(s) specified. (Periods of tolling will not toll  
11 the probation monitoring costs incurred.)

12 "If Respondent is unable to submit costs for any month, he shall be required  
13 instead to submit an explanation of why he is unable to submit the costs, and the  
14 date(s) he will be able to submit the costs including payment amount(s).  
15 Supporting documentation and evidence of why the Respondent is unable to make  
16 such payment(s) must accompany this submission.

17 "Respondent understands that failure to submit costs timely is a violation of  
18 probation and submission of evidence demonstrating financial hardship does not  
19 preclude the Board from pursuing further disciplinary action. However,  
20 Respondent understands providing evidence and supporting documentation of  
21 financial hardship may delay further disciplinary action.

22 "In addition to any other disciplinary action taken by the Board, an  
23 unrestricted license will not be issued at the end of the probationary period and the  
24 respiratory care practitioner license will not be renewed, until such time all  
25 probation monitoring costs have been paid.

26 "The filing of bankruptcy by Respondent shall not relieve the Respondent  
27 of his responsibility to reimburse the Board for costs incurred."

28 22. Respondent's probation is subject to revocation because he failed to comply  
with Probation Condition 8, in that, Respondent failed to pay his probation monitoring fees and is  
in arrears in the amount of \$300.00.

FIFTH CAUSE TO REVOKE PROBATION

(Cost Recovery)

23 23. At all times after the effective date of Respondent's probation, Condition 12  
24 stated:

25 "Respondent shall pay to the Board a sum not to exceed the costs of the  
26 investigation and prosecution of this case. That sum shall be \$476.00 and shall be  
27 paid in full directly to the Board, in equal quarterly payments, within 12 months  
28 from the effective date of this decision. Cost recovery will not be tolled.

“If Respondent is unable to submit costs timely, he shall be required instead to submit an explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

“Respondent understands that failure to submit costs timely is a violation of probation, and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

“Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

“The filing of bankruptcy by the Respondent shall not relieve the Respondent of his responsibility to reimburse the Board for these costs.”

24. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 12, in that, Respondent failed to pay his quarterly cost recovery payment in the amount of \$119 due to the Board by June 23, 2006.

## SIXTH CAUSE TO REVOKE PROBATION

(Valid License Status)

25. At all times after the effective date of Respondent's probation, Condition 14 stated:

“Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet Continuing Education requirements prior to his license expiration date shall constitute a violation of probation.”

26. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 14, in that, Respondent failed to maintain a current and active valid license in that his license expired on February 28, 2006, and has not been renewed.

## PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

///

///

1. Revoking the probation that was granted by the Respiratory Care Board of California in Case No. R-2006 and imposing the disciplinary order that was stayed thereby revoking Respiratory Care Practitioner License No. 15772 issued to ANDREW ANTHONY HOLGUIN, JR.;

2. Revoking or suspending Respiratory Care Practitioner License No. 15772,  
issued to ANDREW ANTHONY HOLGUIN, JR.;

3. Ordering Andrew Anthony Holguin, Jr. to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if probation is continued or extended, the costs of probation monitoring;

4. Taking such other and further action as deemed necessary and proper.

DATED: July 18, 2006

Original signed by Liane Zimmerman for:  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant